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OFFICE OF PETITIONS

In re Application of :
Jerome P. Frankowiak :
Application No. 10/783,602 : ON PETITION
Filed: February 20, 2004 :
Title of Invention: FOLDING FRAMING :
SQUARE :

This is a decision on the request for reconsideration filed February 24, 2005, requesting that above-identified application be accorded a filing date of February 20, 2004, with the specification and oath or declaration as a part of the original disclosure. The request is treated as a petition under 37 CFR 1.53.

The petition is **GRANTED**.

Application papers in the above-identified application were filed on February 20, 2004. However, on October 4, 2004, the Office of Initial Patent Examination mailed a "Notice of Incomplete Nonprovisional Application," notifying applicant that the application had not been accorded a filing date because a complete specification including at least one claim was required and an oath or declaration were missing.

In response, a petition under 37 CFR 1.10, 1.53 and 1.181 was filed on December 10, 2004 because the proper petition fees had not been submitted. The petition filed December 10, 2004 included, an express mail label and a date-stamped postcard receipt itemized to show, amongst other things, that an 18 page specification and declaration were filed on February 20, 2004.

Petitioner submits a copy of the Express Mail label as proof that the application as filed was complete, and argues under 37 CFR 1.10(e) that the application should be accorded a filing date of February 20, 2004. The Express Mail label however is not persuasive evidence of the receipt of the complete specification and declaration on February 20, 2004. Where there is a dispute as to the *contents* of correspondence submitted to the Office an applicant may not rely upon the provisions of 37 CFR 1.10 to establish what documents and or fees were filed in the Office with such correspondence. Reliance on an express mail label is only appropriate where the correspondence was sent by Express Mail but nothing was received by the Office.

The postcard receipt however, corroborates petitioners assertion that the

application as filed on February 20, 2004 was complete and the true copies of the application satisfies the requirements as set out in the Notice mailed October 4, 2004.

No arguments have been presented for relief under 37 CFR 1.181 and thus cannot therefore be addressed. Petitioner is invited to contact the Office if this is not a correct interpretation of the petition.

In view of the foregoing, the petition under 1.53 is **GRANTED** and the petition under 37 CFR 1.10 and 1.181 is **DISMISSED**.

Given the basis for granting the petition, the petition fees filed with the petition on December 10, 2004 in the amount of \$130.00 and \$270.00 submitted with the request for reconsideration will be refunded.

This matter is being referred to the Office of Initial Patent Examination (OIPE) for further processing with a filing date of February 20, 2004, using the application papers received in the Office on that date and the papers submitted on petition December 10, 2004.

Telephone inquiries regarding this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

A handwritten signature in black ink, reading "Patricia Faison-Ball". The signature is written in a cursive, flowing style with large, connected letters.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions